

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15

LEE COMPANY

Employer

and

Case No. 15-RC-8485

PLUMBERS AND STEAMFITTERS
LOCAL UNION #52

Petitioner

REGIONAL DIRECTOR'S DECISION AND ORDER

The Employer, Lee Company, a Tennessee corporation, is a mechanical contractor in the construction industry and is currently under contract with Rust Constructors, Inc. to provide certain plumbing and pipefitting work for Hyundai Motor Manufacturing Alabama, LLC's construction project in Hope Hull, Alabama. The Petitioner, Plumbers and Steamfitters Local Union No. 52, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent employees working for the Employer at the Hyundai Motor project in Hope Hull, Alabama, including plumbers, pipefitters, pipe welders and helpers; but excluding laborers, clerical workers, supervisors and professional employees. There is no history of collective-bargaining affecting any of the employees involved in this proceeding.

A hearing officer of the Board held a hearing on the issues raised by the petition and the Employer filed a brief with me.

I. STIPULATIONS

The parties agree that: the Employer is engaged in commerce within the meaning of the National Labor Relations Act, as amended, and is subject to the jurisdiction of the National Labor Relations Board;¹ the Petitioner is a labor organization within the meaning of the National Labor Relations Act, as amended; the above-described unit is an appropriate unit for the purpose of collective-bargaining;² and that Butch Miers, Ed White and Quincy Garrett are supervisors as defined in the Act. Furthermore, the parties agree to waive the Daniel formula³ and instead stipulate to the standard Board formula for purposes of determining voting eligibility if an election is directed.

II. ISSUE OF DISAGREEMENT

The sole issue of disagreement is whether the work of the Employer on the Hyundai Motor project in Hope Hull, Alabama is of such short duration that no useful purpose would be served by directing an election. In this decision, I will examine Board law as it applies to the "short duration doctrine" paying particular attention to the factors the Board considers when determining whether an election is warranted. I will then examine the facts of this case as they relate to these factors. For the reasons set forth in the remainder of the decision, I have determined that no useful purpose would be served by conducting an election in this matter and will dismiss the petition.

III. THE SHORT DURATION DOCTRINE

¹ Specifically, the parties stipulated that Lee Company, a corporation with its principal office and place of business in Franklin, Tennessee, and a job site in Hope Hull, Alabama, is engaged in business as a mechanical contractor in the construction industry, where it annually performs services valued in excess of \$50,000 in states other than the state of Tennessee and annually purchases and or receives at its Hope Hull, Alabama job site goods valued in excess of \$50,000 directly from points outside of Alabama.

² Specifically, the unit as defined includes plumbers, pipefitters, pipe welders and helpers working at the Hyundai Manufacturing project in Hope Hull, Alabama. Eighteen employees are included in the unit as defined by the petition.

³ *Daniel Construction Co., Inc.*, 167 NLRB 1078 (1967); *Steiny and Co., Inc.*, 308 NLRB 1323 (1992).

The Board has held that no useful purpose would be served by directing an election in situations in which an employer's operations are about to terminate and the employer has no other ongoing construction projects or work under bid within the geographic scope of the petitioned for unit. See e.g., *Davey McKee Corporation*, 308 NLRB 839 (1992); *M.B. Kahn Construction Co.*, 210 NLRB 1050 (1974). However, in situations in which the evidence does not definitively establish that the cessation of an employer's operations is imminent, or in which the preponderance of evidence suggests that after a project ends, the employer will be performing work within the same geographic area as the petitioned for unit, the Board will direct an election. See e.g., *Fish Engineering & Construction Partners, Ltd.*, 308 NLRB 836 (1992).

To determine whether an election is warranted, the Board focuses on two factors: 1) Whether the cessation of an employer's operations is *imminent*; and 2) Whether the employer has any other ongoing projects or bids in the same geographic area as the petitioned for unit. I will now examine how the Board has applied these standards.

A. IMMINENT CESSATION

The Board has repeatedly held that when the projected work performed by a petitioned for unit will terminate within 3 or 4 months, no useful purpose would be served by directing an election. *Davey McKee Corporation*, 308 NLRB 839 (1992); *M.B. Khan Construction Co.*, 210 NLRB 1050 (1974); *General Motors Corp.*, 88 NLRB 119 (1950); *Todd-Galveston Dry Docks*, 54 NLRB 625 (1944); *Fraser-Brace Engineering Co.*, 38 NLRB 1263 (1942); and *Fruco Construction Co.*, 38 NLRB 991 (1942). In *Davey McKee*, the Board upheld the Regional Director's decision to dismiss a petition in which the projected work performed by the petitioned for unit was scheduled for

completion within 29 days of the end of the hearing. In *M. B. Kahn Construction Co., Inc.*, the Board ordered the petition dismissed due to the imminent completion of the construction project where the hearing was held on December 13, 1973, but the employer had scheduled employee reductions on March 4⁴ and April 15⁵ and it was projected that the workforce would be reduced to "practically nothing" by June. In *General Motors*, the Board dismissed a petition where, at the completion of a project within 2 - 5 months after the hearing, the mechanics included in the unit would be terminated.

B. ONGOING PROJECTS OR BIDS IN GEOGRAPHIC AREA OF PETITIONED FOR UNIT

If the record establishes imminent cessation of the projected work of the petitioned for unit, the Board will also look at whether the employer has any ongoing projects or bids in the same geographic area as the petitioned for unit. In *Fish Engineering & Construction Partners, Ltd., supra*, the Board reversed the Regional Director's decision to dismiss a petition where the employer had worked four projects in the previous year, had two current projects at the time of the hearing, and had bid on another project for the same company with which it was then under contract. The project under bid was scheduled to commence within two months of the completion of the Employer's current project and was located in the same geographic area as the petitioned for unit. The Board concluded: "Based on this undisputed evidence of the Employer's past and current work, and its bidding on future work within the unit sought by the Joint Petitioner, the Board finds that it would serve a useful purpose to conduct an immediate election after resolving the remaining unit issues." In directing an election, the Board

⁴ Petitioned for unit reduced from 24 - 30 carpenters and 12 helpers to 10 carpenters and 5 or 6 helpers.

⁵ Additional cuts to 4 carpenters and 2 or 3 helpers.

distinguished the situation in that case from the facts in *Davey McKee* noting that the employer in *Davey McKee* intended to terminate its employees upon the completion of the project. Furthermore, it noted that the employer in *Davey McKee* had no other ongoing projects within the geographic scope of the unit sought by the joint petitioner and that the joint petitioner in that matter failed to present evidence to support its claim that the employer had bid on future projects. In *Fish*, on the other hand, the evidence established that the employer had worked on several recent projects in the area and had bid on future work with the current contractor.

IV. FACTS OF THIS CASE

A. IMMINENT CESSATION

On or about June 19, 2003, the Employer executed a contract with Hyundai Motor, under general contractor Rust Constructors, Inc., to perform work on the Roof Conductor and Underslab Piping Package for Hyundai Motor's job site in Hope Hull, Alabama. This contract provides for the work to be performed pursuant to the following Work Completion Schedule:

| Area | Start No Later Than | Finish No Later Than |
|-------------------|----------------------------|-----------------------------|
| Mobilize | 7/21/03 | |
| Assembly Building | 7/21/03 | 11/6/03 |
| Weld Building | 8/16/03 | 10/18/03 |
| Stamping Building | 11/19/03 | 1/14/04 |
| Engine Building | 11/11/03 | 1/13/04 |
| Demobilize | | 1/21/04 |

According to this schedule, all work on the Rust contract for the Hyundai Motor project must be completed by January 21, 2004. Employer witnesses testified without contradiction that the project is on schedule and could possibly be completed ahead of schedule. The Employer further submits that the present workforce of 15-20 employees will be progressively reduced until by January 14, 2003 the Employer will have only 6-10 employees who, at that time, will be terminated.⁶ Based on the foregoing, I find that the cessation of the work performed by the petitioned for unit is imminent.

B. ONGOING PROJECTS OR BIDS IN GEOGRAPHIC AREA OF PETITIONED FOR UNIT

Employer Project Manager Duke Rerisi testified that the Employer does not presently have any other contracts on the Hyundai Motor project. Rerisi further testified that Gray Construction, another contractor, has bid on some additional work at the Hyundai Motor project. The Employer, in turn, has placed a bid with Gray Construction to perform this work.⁷ The transcript is not clear as to when this work is to be awarded.

The Employer contends that, with the exception of Vong Dinh, a plumber, its employees currently working on the Hyundai project are “temporary” employees, and that their status as temporary employees is an indication that it has no plans to employ them after their current work on the Rust contract has been completed.⁸ The Employer’s hiring records classify these employees as “temporary” employees as opposed to “permanent” or “part-time” employees. Unlike permanent employees, temporary

⁶ Although this information was submitted in the Employer's post hearing brief, these facts do not appear in the record.

⁷ The Employer's counsel objected to the relevance of testimony on outstanding bids or other prospective, potential work because they maintain this is speculative. However, as addressed in the above-referenced case law, ongoing projects and outstanding bids in the geographic area of the petitioned for unit are relevant in determining whether work availability for the petitioned for unit could reasonably be anticipated beyond current project dates sufficient to warrant conducting an election.

⁸ The Employer did not contend that their status as temporary employees rendered them ineligible to vote.

employees do not receive benefits. The record shows that with the exception of Dinh, the employees working on the Hyundai project do not enjoy any benefits. Dinh was transferred to the Hyundai project from another project the Employer had been working on in Florida. The evidence did not show whether the other employees on the Hyundai project had previously worked for the Employer.

According to Project Manager Rerisi's testimony, if the Employer is awarded the Gray contract, Dinh would be the only employee in the 15-20 person petitioned-for unit that would be retained.⁹ Rerisi asserted that the Employer would employ approximately 12 employees on this contract, 5 of whom, including Dinh, would fall under the job classification of "plumber," a position in the petitioned-for unit. However, the other four plumbers would be pulled from the Employer's pool of permanent employees working on other projects that are winding down. The remaining 7 employees on the Gray project would fall under job classifications that are not included in the petitioned-for unit.

Rerisi acknowledged that if the Employer were awarded the Gray contract, its work at the Hyundai project would be extended, but only briefly. He testified that the anticipated four-month project for Gray should have already started but that it has not. Despite this delay, he asserted that the work to be performed under the Gray contract has a deadline for completion of January 2004. Pre-bid meetings instructed bidders to plan to complete the work by the end of January and to include costs to ensure timely completion into the project bids. Therefore, overtime costs, including working a minimum of two shifts, seven days a week, were included in the Employer's bid to meet the January 2004 project deadline.

⁹ The hearing transcript covering this discussion contains errors on page 41 from approximately line 9 - line 13 in that the Q & A attributions are reversed on comments attributed to the questions posed by Petitioner representative Jack Fields and the answers provided by Employer witness Project Manager Duke Rerisi.

There is no other evidence of ongoing work or outstanding bids that could extend the work performed by the petitioned for unit beyond January 2004.

V. ANALYSIS

Evidence adduced at the hearing established that the current Rust contract work on the Hyundai Motor project is on schedule to meet its mid-January 2004 deadline. The only other evidence of possible work that could extend work for the petitioned for unit is a pending bid for work for Gray Construction, which is also scheduled for completion by the end of January 2004. Unlike *Fish Engineering*, the bid in the instant case is with another contractor that does not currently have any work at the Hyundai project. The record does not establish a likelihood that the Employer will be awarded the Gray contract. Nor does it even establish a likelihood that Gray will be awarded work at Hyundai. In these circumstances, any assertion that the Employer will continue working at the Hyundai project after work on the Rust contract is completed is largely speculative. In addition, even if it continues working at the Hyundai project after completing its work on the Rust contract, only one member of the petitioned-for unit is likely to be retained. Based on the foregoing facts, I conclude that it would serve no useful purpose to conduct an election at this time.

VI. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. In view of the imminent completion of the construction project involved herein, no useful purpose would be served by conducting an election at this time.

ORDER

It is hereby ordered that the petition be, and it hereby is, dismissed. Should the petitioned for unit remain in existence for a substantially longer period of time than now anticipated or should the Employer acquire additional construction projects at the Hyundai Motor Manufacturing project in Hope Hull, Alabama covering the employees included in the petitioned for unit, I will entertain a motion to reinstate the petition.¹⁰

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-

¹⁰ *Davey McKee Corporation*, 308 NLRB 839 (1992).

0001. This request must be received by the Board in Washington by 5:00 p.m., EST on November 24, 2003. The request may **not** be filed by facsimile.

Dated this 10th day of November, 2003 at New Orleans, Louisiana

Rodney D. Johnson, Acting Regional Director,
National Labor Relations Board
Region 15
1515 Poydras Street, Suite 610
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